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**ORIGINAL**

85-5260

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1985

No. 85-5260

KENNETH DALE LANIER, Petitioner,

versus,

STATE OF SOUTH CAROLINA, Respondent.

BRIEF IN OPPOSITION TO PETITION FOR  
WRIT OF CERTIORARI

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QUESTION PRESENTED

I.

Should the writ be granted when the South Carolina Court of Appeals has applied the applicable constitutional principles and correct law and found that an admittedly voluntary confession is not rendered inadmissible where it is not contended that the confession was tainted by a prior arrest?

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# CASES INVOLVED

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### OPINION BELOW

The opinion of the South Carolina Court of Appeals is reported in Memorandum Opinion No. 85-MO-003, filed February 14, 1985, as reproduced in Petitioner's Appendix at pages A-1 - A-2.

### JURISDICTION

Respondent does not question the Court's jurisdiction in this proceeding.

### QUESTION PRESENTED

I.

Should the writ be granted when the South Carolina Court of Appeals has applied the applicable constitutional principles and correct law and found that an admittedly voluntary confession is not rendered inadmissible where it is not contended that the confession was tainted by a prior arrest?

### ARGUMENT

The writ should be denied since the South Carolina Court of Appeals applied the applicable constitutional principles and correct law and found that an admittedly

voluntary confessions is not rendered inadmissible where it is not contended that the confession was tainted by a prior arrest.

At trial Petitioner's sole grounds for the suppression of his confession was the contention that he did not know that the statement could be used in a court of law and there was no reason to arrest him -- especially without a warrant. (Res. App. pp. 1-2; p. 3, line 10-p. 7, line 6). Petitioner did not contend that his statement was not voluntary because it was a direct result or true product of an unlawful arrest and thereby tainted. The South Carolina Court of Appeals was entirely correct when it noted in its opinion that Petitioner "does not claim his confession was not voluntary...." (Pet. App., p. A-2). Simply because a statement is given at some point in time after an allegedly unlawful arrest does not mean that the statement must be suppressed. "Voluntariness remains as the test of admissibility." State v. Lanier, S.C.App., Memo. Op. No. 85-MO-003, February 14, 1985. (Pet. App., pp. A-1 - A-2). Nothing in any authority cited by Petitioner contradicts this standard.

While a confession which results from the exploitation of an unlawful arrest is tainted and not properly admissible, the connection between the arrest and statement may become so attenuated as to dissipate the taint. A confession is not inadmissible per se because it follows an unlawful arrest chronologically. Wong Sun v. United States, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963). Miranda warnings do not by themselves automatically purge the taint of an unlawful arrest, Brown v. Illinois, 422 U.S. 590, 95 S.Ct. 2254, 45 L.Ed.2d 416 (1975); Dunaway v. New York, 442

U.S. 200, 99 S.Ct. 1248, 60 L.Ed.2d 824 (1979), even when the Miranda warnings are given and understood, and the confession was voluntary for purposes of the Fifth Amendment. Taylor v. Alabama, 457 U.S. 687, 102 S.Ct. 2664, 73 L.Ed.2d 314 (1982). But when intervening events break the causal connection between the illegal arrest and the confession, the confession is admissible since it is "sufficiently an act of free will to purge the primary taint." Id. Where a defendant, as in the present case, does not maintain that there was a connection between an allegedly illegal arrest and his confession (confession was a fruit of his illegal arrest) and admits the confession was voluntary or an act of free will, the confession is admissible. Id.

#### CONCLUSION

For the foregoing reasons, Respondent submits that Petitioner's Petition for a Writ of Certiorari be denied.

Respectfully submitted,

T. TRAVIS MEDLOCK  
Attorney General

HAROLD M. COOMBS, JR.  
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ATTORNEYS FOR RESPONDENT.

September 4, 1985

APPENDIX

3 MR. AUDNICK: Step down. Your Honor, basically what my  
4 motion would go to if not coerced in any way that he did  
5 not make a knowing and intelligent waiver in that he didn't  
6 know this statement would be used in a court of law. I be-  
7 lieve you have heard the evidence and that's the gist of our --  
8 THE COURT: Let the record show that it is specifically  
9 recognized that this line of testimony has been taken in  
10 camera in the absence of the jury regarding solely the ques-  
11 tion of admissibility as required for consideration by  
12 the court. The court has listened to the two witnesses.  
13 The court is impressed by the defendant's recited that he  
14 did sign the paper, that he can read as well as the Solicitor  
15 can read, and the testimony by Officer Moseley that rights  
16 were read and that the defendant signed the acknowledgement  
17 of same. It is very obvious as we go forward in this matter  
18 that the finders of fact, namely the jury, even with the  
19 basis for admissibility laid, that the finders of the fact  
20 must determine themselves as a trial jury the same matters  
21 upon which the court is called upon to rule in a preliminary  
22 matter-in a preliminary manner. For such admissibility  
23 purposes and at this time I do find and recognize that the  
24 defendant made the statement, that the defendant was warned  
25 of his constitutional rights, that the defendant knowingly

1 and intelligently waived his constitutional rights and  
 2 fourth that the statement was given voluntarily based upon  
 3 the testimony which has thus far been received on those  
 4 specific matters; and again recognizing that the ultimate  
 5 determination of all of those factors are for the trial  
 6 jury in the pursuit of this trial on its merits and based  
 7 upon the continuing duty and responsibility of the finders  
 8 of the facts; I do recognize for preliminary purposes that  
 9 the State has got the burden to allow the admissibility  
 10 thereof. Anything further at this time?

11 SOL. WEEKS: Nothing, your Honor.

12 MR. RUDNICK: Your Honor, there isn't anything further  
 13 at this time. It may be that we may object during the trial  
 14 if it is not shown that probable cause to arrest in this  
 15 case. I realize you have already ruled on the waiver of  
 16 rights and I would not like to object during the trial if you  
 17 would not that for the record.

18 THE COURT: It is so noted. Your rights are preserved  
 19 and reserved thereunder. Anything else?

20 SOL. WEEKS: Nothing, your Honor.

1 up some matters in your absence procedurally that are re-  
 2 quired to be taken up in your absence, plus we have another  
 3 matter that we need to take up before the court that's not  
 4 related to this case. And so you are probably going to  
 5 get a, maybe a twenty-five minute break. We will get back  
 6 with you just as soon as we can. Watch your step as you  
 7 come down, have a nice break and do not discuss this case.  
 8 Remember, that's our ongoing thing: do not discuss this  
 9 case.

10 (The following takes place outside the  
 11 presence of the jury. )

12 THE COURT: Let the record show that the jury has  
 13 departed. Mr. Rudnick.

14 MR. RUDNICK: Yes, sir, your Honor, my motion would go  
 15 to the fact that the defendant at this point has been  
 16 arrested, he is getting ready to make a statement to Mr.  
 17 Moseley, where we are in the trial. It is my contention  
 18 that there was no reason to arrest Mr. Lanier to begin  
 19 with. The only evidence we have so far that really mention-  
 20 ed Mr. Lanier's name is Mrs. Idell Davis saw them riding  
 21 down the road at 6:00 o'clock in the morning, down I ima-  
 22 gine an unrelated road; the robbery in question occurred  
 23 at 2:00 a.m., 2:00 to 2:15 according to Mrs. Blanchard. She  
 24 in no way pointed out the defendant. Mrs. Davis, as I  
 25 stated, is four hours later. The only thing she can say is

1 four hours later she saw him riding down the road; and the  
2 statement from Mrs. Arthers was -- the record was that Mr.  
3 Sanders had first said that Mrs. Arthers said it was Lanier  
4 on the phone when in fact she said that it was Johnny Wat-  
5 kins and when the questioning continued, it was "well, it  
6 might have been Dale but it sounded to me like it was Joh-  
7 nny." So based on that fact I think that the defendant was  
8 illegally detained. There was no warrant out for his arrest  
9 at that time and there doesn't seem to be any exigent cir-  
10 cumstances for him to be picked up; therefore, I would ask  
11 the court that the statement not be allowed into the record.

12 THE COURT: How about it, Solicitor?

13 SOL. WEEKS: Your Honor, the State's position in this  
14 matter is the totality of the circumstances involved cer-  
15 tainly indicate that the defendant, Dale Lanier, was involved  
16 in the robbery. The investigation -- of course you sus-  
17 tained defense's objection as to the hearsay. It is my  
18 position that probable cause can be based on hearsay. It is  
19 based on it all the time. When they go to arrest Mr.  
20 Lanier, went to the house, they observed the wig matching  
21 the description and the glasses matching the description  
22 and the rolled up money there. They had previously just  
23 stopped Brenda Lanier with a pistol matching the descrip-  
24 tion of the pistol used in the armed robbery. They have  
25 the information from the agent in the attempted armed

1 robbery that Mr. Lanier's name was mentioned, it could  
2 have been Mr. Lanier, the woman said in her statement,  
3 or it might have been Johnny Watkins, she wasn't real sure  
4 but she thought it was Johnny Watkins or something along  
5 those lines. Johnny Watkins, Brenda Lanier--Brenda Lanier  
6 Watkins-- and Dale Lanier lived in that residence. The  
7 police staked the residence out, observed the car there,  
8 they found the pistol in the car. Mr. -- Mrs. Davis is a  
9 key witness because she puts the defendant, Mr. Lanier,  
10 and Mrs. Watkins together in the car about 6:00 o'clock that  
11 morning on 126 in Aiken. I think the totality of the  
12 circumstances involved in this situation is more than enough  
13 to make out a probable cause. I am not saying it was enough  
14 at that point to convict Mr. Lanier but at that time I be-  
15 lieve they had probable cause to arrest him.

16 THE COURT: Mr. Rudnick, among the many other small  
17 particulars which the record reflects it would appear that  
18 a viewing of the defendant and Brenda Lanier Watkins or  
19 Brenda Watkins together at about 6:00 o'clock, this occur-  
20 rence was on or about 2:15 or 2:00 or 2:15 or earlier  
21 the same morning, that that together with the various  
22 other particulars as referred to by the Solicitor and  
23 as the record reflects would be a sufficient basis that  
24 your objection is overruled and your objection is noted  
25 and respectfully overruled.

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1 MR. RUDNICK: Your Honor, I would just like to point  
2 out for the record even based on this it was no warrant at the  
3 time he was arrested and I do believe under Peyton v.  
4 New York a warrant should have been required and ---

5 COURT REPORTER: What ---

6 THE COURT: Hold just a minute. She is having trouble.  
7 You will have to speak out more clearly.

8 MR. RUDNICK: Under Peyton v. New York absent any  
9 exigent circumstances the warrant would have been required  
10 and I would just like that be noted in the record.

11 THE COURT: Your further objections are also noted  
12 and at this time overruled. Go ahead, Solicitor. Are  
13 you through with matters necessary to take up in the  
14 absence of the jury?

15 SOL. WEEKS: Yes, sir.

23 THE COURT: Is the defendant ready for the jury?

24 MR. RUDNICK: Yes, sir, your Honor. Instead of object-  
25 ing in the presence of the jury, I would like to note my

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1 prior motion and objection of the voluntariness of the  
2 statement with that being proffered at this time.

3 THE COURT: It is so noted without need of your repeat-  
4 ing the objections. Bring in the jury, please.

5 (The following takes place within the presence of  
6 the jury.)

7 THE COURT: Mr. Moseley if you will resume the witness  
8 stand, please. Mr. Randy L. Moseley, continue under  
9 your oath, please, sir.

10 RANDY L. MOSELEY HAVING BEEN PREVIOUS-  
11 LY SWORN, RESUMES THE WITNESS STAND.

12 DIRECT EXAMINATION BY SOL. WEEKS CONTINUES:

13 Q Investigator Moseley, did you obtain a statement  
14 from the defendant, Dale -- Kenneth Dale Lanier?

15 A Yes, sir, I did.

16 Q Regarding these robberies -- this robbery?

17 A Yes, I did.

18 Q Would you please tell me what the defendant related  
19 to you about his participation in this robbery.

20 A Yes, I will. Myself and Capt. Joe Martin, Investigator  
21 Jim Sanders interviewed Dale Lanier on April 20, 1983, at  
22 about 1:20 P.M. at the Aiken County Law Enforcement  
23 Center. He was advised of his rights, he affirmed that  
24 he understood his rights and signed what is known as a  
25 Rights Waiver. He indicated that he wished to talk with